

The 17th December, 1982

No. 9(1)82-6Lab/12473.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Taylor Instruments Co. (India) Ltd., 14, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 196 of 1981

between

SHRI B. K. GUPTA, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S TAYLOR INSTRUMENTS COMPANY (INDIA) LTD., 14 MATHURA ROAD, FARIDABAD

Shri S. S. Gupta for the workman.

Shri S. L. Gupta for the respondent-management.

#### AWARD

This reference No. 196 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/237/80/32051, dated 3rd July, 1981, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri B. K. Gupta, workman and the respondent-management of M/s Taylor Instruments Company (India) Ltd., 14 Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri B. K. Gupta was justified and in-order? If not, to what relief is he entitled?

Notices were issued to the parties or receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to demand notice is that he was working on a permanent post of Operator for the last seven years and drawing a salary of Rs. 602 per month. The respondent illegally and unjustifiably terminated the services on 17th April, 1980. So he is entitled for the reinstatement with continuity of services and full back wages.

The case of the respondent according to the written statement is that in the present case the workman has failed to file the claim statement which is mandatory under section 10(b) of the Industrial Disputes Act, of Central Rules, 1957. If there is no statement of claim, no dispute survives for adjudication and the orders may be answered accordingly. There is no valid order of reference in existence because the Government refused to refer the demand notice for adjudication on 27th July, 1980. The reference is sent without any fresh material placed before the appropriate Government which is ultra vires of the appropriate Government and malafide exercise of the powers. The claimant was charge-sheeted and he tendered his explanation in which he categorically admitted what was said against him. Considering the nature of the charges of the reply of the claimant, who had forfeited the confidence reposed in him by the management, his services were terminated. Since the claimant had admitted the charges there was no need or question for holding an enquiry and no useful purpose would have been served for that. The action of the management being bona fide, legal and justified, no dispute could either exist or otherwise be apprehended. The respondent issued a letter of charge-sheet on 12th April, 1980 containing the acts of misconduct reported to have been committed by the claimant. The claimant was directed to tender his explanation. The Hindi copy was also given. The extra time was also allowed. The claimant replied, dated 16th April, 1980, admitting the charge-sheet without any

un-certain terms. On a consideration of the gravity of the charges committed by Shri B. K. Gupta, claimant, and having regard to the past service record and other extenuating and aggravating circumstances, it was decided by the management to dismiss the services of the claimant and he was dismissed from the service according to orders of the company. The action of the respondent was not only legal and justified but the same is bona fide also. So the reference may be rejected.

On the pleadings of the parties, following issues were framed:—

- (1) Whether the reference is bad in law in view of preliminary objection in written statement?
- (2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

My findings on the issues are as under:—

#### ISSUE NO. 1:

The representative of the respondent argued on this issue that there is preliminary objection about the incompetence of the appropriate Government to refer a case once it had been rejected. The reference under such circumstances can be made if the workman shows any change in the circumstances of any fresh material on record before the appropriate Government. There is nothing like this in this case. The review application of the workman is Exhibit M-15 neither shows any change in the circumstances nor places any new material on record. Therefore, the present reference is bad in law and be quashed on this ground.

The representative of the workman argued on this issue that the appropriate Government has the authority to refer the case for adjudication in all circumstances even without any change in the circumstances or material. But in this case after

rejection the reference by the appropriate Government, the workman submitted an application Exhibit M-15 with certain new materials and circumstances. The Government also sent the same to the respondent for their comments. The respondent gave their comments and after considering the comments of both the sides the Government referred the case for adjudication and there is nothing wrong in referring the case.

After hearing the arguments of both the parties I agree with the arguments put forward by the representative of the workman and decide the issue in favour of the workman and against the respondent.

#### ISSUE NO. 2:

Issue No. 2 is as per reference. The representative of the respondent argued on this issue that as stated by the respondent witness Shri V. B. Aggarwal, Manager of the respondent, as MW-1, the claimant was working under him. On 9th April, 1980, at about 4.35 p.m. Shri Sachdeva came to him and told about the misconduct of the claimant and also told about the happening with the claimant during the round in the factory. The witness further stated that Shri Sachdeva told him that he made the round at 3.45 p.m. at that time the claimant was working on the machine C-L-23 which was not allotted to him for the work of the day. The machine was allotted to Shri Rawat and he was working on the machine without any permission. He was preparing an implement of aluminium weighing about 2 Kg. He had also a plastic model by which he was preparing. The piece was not meant for the factory, it was for the private use. So he was using company's property (Aluminium) using company's machine and tools for private work. When he was asked about this task, the claimant stated that it is meant for maintenance department. Shri Sachdeva met Shri Rawal in the way who tried to snatch it. He further stated that Shri Sachdeva also told him that when the workman was

asked to stop the machine, the workman disobeyed the orders of the supervisor. The claimant was allotted machine No. CO-5 but he was working on the machine No. C.L. 23 without any permission and he told that he has finished his day's work whereas he has not done his day's duty and gave the short production. He should have given 28 pieces whereas he gave 21 pieces. He further stated that Shri Sachdeva enquired the matter from the maintenance department, and the maintenance department refused for this part. Shri Sachdeva gave his complaint in writing which is Exhibit M-1 and the witness gave his report which is Exhibit M-2 to the Vice-President of the concerned respondent. On this report the charge-sheet, Exhibit M-3 was prepared in which five allegations were framed against him which are as under.—

- (1) Leaving his own machine and place of duty and working on the machine of other workman unauthorisedly and without permission.
- (2) Stealing a piece of aluminium weighing about 2 Kg. and giving it the shape of a plastic piece which was not factory work but was private work of the claimant. Thus, using company's property (Aluminium) using Company's machine and tools for private work.
- (3) Refusal to obey orders of the Superior when Mr. Sachdeva asked the claimant to stop the machine whereafter Mr. Sachdeva himself switched off the power to bring the machine to a halt.
- (4) Misrepresentation to Mr. A. K. Sachdeva that the part belonged to the maintenance department.
- (5) Giving of one's own lesser production thereby putting the company to a loss.
- (6) Indiscipline.

The witness further stated that the claimant gave a letter, Exhibit M-4 requesting to extend the time of explanation

questing to extend the time of explanation of charge-sheet which was extended and the claimant gave his reply of the charge-sheet which is Exhibit M-5. He further argued that the claimant admitted all the facts in his reply, Exhibit M-5. Shri Rawat was also charge-sheeted but his charges were not so serious. The reply and the charge-sheet was considered by the respondent and the respondent did not feel the necessity of holding a regular enquiry and he was dismissed,—vide Exhibit M-6. The claimant further gave a letter, Exhibit M-7 to the respondent and the respondent replied,—vide Exhibit M-8. Thereafter the claimant gave a demand notice on 7th May, 1980, which is Exhibit M-10. The respondent replied the demand notice which, Exhibit M-11. The demand notice of the claimant was rejected by the Government and the claimant made an application for review of the decision,—vide Exhibit M-15. The respondent replied to the Labour Commissioner,—vide Exhibit M-16. The main defence of the claimant is that the reply, Exhibit M-5 of the charge-sheet was given on the assurance of the management that they will not take any legal action against him as Shri B. S. Rawat stated as WW-2 but there is contradiction between the statement of the claimant and the witness. Shri B. S. Rawat has stated that he along with General Secretary met the representative of the respondent, whereas Shri B. K. Gupta, claimant was not present and the respondent assured them that no action will be taken but even Shri Rawat was suspended from his duty for 15 days as punishment which was without wages. On the other hand Shri B. K. Gupta, the claimant has stated that he was assured by the respondent and he along with Rawat met the management for the charges levelled against them. In this contradiction the statement of the two cannot be believed. There was no necessity of domestic enquiry. The charge-sheet was given to the claimant and asked to tender his explanation. If the workman refused the charges then the explanation would have been considered by the management in different way and enquiry was necessary to enquire the

matter, where the workman admits the charges un-conditionally there is nothing left to proceed further. The enquiry will be also a formality. The learned Supreme Court has held in a case of Central Bank of India Ltd., v. - The Management of Kasunamoy Banerjee-1967-II-LLJ, page 739 (S.C.) that when there is admission of guilt there will be nothing more to enquire into. In this case the workman admitted his guilt,—vide Exhibit M-5. So there is no necessity to hold the domestic enquiry in the matter. The allegation of the workman about the assurance is quite false and concocted story because why the management gave the charge-sheet to the workman if they have not to take any action against him. This does not feel to the reason. In the examination in chief the workman has stated that the management told both of them to give apology and they will pardon them but in the cross-examination he says that Shri Rawat, Vice-President talked to the management. He speaks two things in one breath which cannot be believed. The claimant misappropriated the Company's property before other act of mis-conduct. Shri B. S. Rawat was charge-sheeted and punished according to the charges and the claimant was rightly dismissed according to the charges against him and which is according to certified standing order of the company which are Exhibit M-18. He further argued that there is no victimisation in this case as the workman has not alleged any allegation on the respondent that why the respondent was against him. When there was no previous enmity between two there can be no victimisation. So the order of the respondent for dismissal was proper and justified.

The representative of the workman argued on this issue that as stated by Shri B. K. Gupta as WW-1 he was in the service of the respondent from 1973 as operator and was drawing Rs. 600 per month. He received the charge-sheet, Exhibit M-3 and same type of charge-sheet was given to Shri Rawat. It was done because he was a President of the union. He applied for the extension of the time to reply the charge-sheet and was granted to him and during this period

they met the Vice-President of the respondent who assured them that they will take no action and asked the claimant to give apology for the action done. On these talks he gave the reply, Exhibit M-5. He was proved and corroborated by Shri B. S. Rawat as WW-2 in his statement. He further argued that the workman has proved on the file that he has not admitted the fault but the reply was given on assurance of the respondent, and the assurance was proved by the workman and his co-workman Shri B. S. Rawat. Shri B. S. Rawat was also charge-sheeted and he also tendered apology,—vide Exhibit W-2. The workman was dismissed and Shri Rawat was ordered suspension for 15 days only. The charges against both the workmen were merely equal and of the same gravity. There was a negotiation between the respondent and these workmen that is why the workman took time to reply,—vide Exhibit M-4. The respondent order is arbitrary and should not stand as legal. So the orders of dismissal is unjustified and not in order and the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file, I agree with the arguments put forwarded by the representative of the respondent because after admission of the allegations of the respondent there was no necessity of domestic enquiry as held by the Learned Supreme Court which was cited by the respondent's representative. Moreover both the workmen were charge-sheeted. There were six allegations against these workmen and three allegations against the workman Shri B. S. Rawat. The main allegation against Shri Rawat was to leave the machine and gave it to the claimant for preparing the piece. He was suspended for 15 days without wages and Shri Rawat had not objected the punishment. He made no complaint to any authority for this punishment as he has admitted in his cross-examination as WW-2. The orders passed by the respondent after considering the allegations and the reply of the workman was according to the Certified

standing orders of the company. The factory are required a strict discipline for the smooth working in the factory and without which the factory cannot work smoothly. So I hold that the action of the respondent was proper and justified and in view of the charge-sheet and his reply and the workman is not entitled to any relief.

This be read in answer to this reference.

The 19th November, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endorsement No 2506, dated 3rd December, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

No. 9(1)82-6Lab /12477.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Taylor Instruments Co. (India) Ltd., 14, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT, HARYANA,  
FARIDABAD

Reference No. 132 of 1981  
between

SHRIMATI PROMILA DEVI, WORKMAN AND THE RESPONDENT

MANAGEMENT OF M/S TAYLOR INSTRUMENTS CO., (INDIA), LTD., 14TH, MATHURA ROAD, FARIDABAD.

Shri Parshotam Singh and Shri Sham Sunder Gupta, for the workman.

Shri S. N. Bhandari, for the respondent-management.

#### AWARD

This reference No. 132 of 1981 has been referred to this court by the Hon'ble Governor of Haryana—vide his order No. ID/FD/44/81/16196, dated 25th March, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shrimati Promila Devi, workman and the respondent management of M/s Taylor Instruments Co. (India) Ltd., 14th, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shrimati Promila Devi was justified and in order ? If not, to what relief is she entitled ?

Notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the claimant according to her demand notice is that she joined the services of the respondent as Instruments Assembler from 21st June, 1978 and was drawing the salary of Rs. 400 per month at the time of termination. The services were terminated on 19th December, 1980, saying that her services are no longer required by the company. The termination is mala fide, unjustified and illegal and unfair labour practice amounts to victimisation. Such termination amounts to retrenchment and the respondent has not complied with the mandatory provisions of section 25-F of the Industrial Disputes Act and rules thereunder. So she is entitled for her reinstatement with full back wages and continuity of service.

The case of the respondent according to written statement is that there is no dispute under section 10(1) of the Industrial Disputes Act. The claimant was appointed on probation for a period of six months in terms of letter, dated 21st June, 1980 and her services came to an end automatically on 19th December, 1980. So, it was not a industrial dispute existing at the time of reference. So the appropriate Government has not acted according to law and the reference is bad. The claimant was appointed for a period of six months as Instrument Assembler under the terms and conditions of the appointment letter and she can be confirmed by an order in writing and not entitled to automatically confirmation. During her probation her work was assessed by the immediate superiors and she can be considered for the confirmation. so letter, dated 19th December, 1980 was issued to her. She was not employed by the respondent from 21st June, 1978 as alleged. So the reference is bad and the workman is not entitled for any relief under the above circumstances. It may be rejected.

On the pleadings of the parties, following issues were framed:—

1. Whether the reference is bad in law for the reason stated in the preliminary objection ? If so, to what effect?
2. Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is she entitled ?

My findings on the issues are as under:—

#### ISSUE NO. 1:

The representative of the respondent argued on this issue that as claimant was appointed on probation and her services automatically came to an end after expiry of period of probation. So there is no dispute exist between the parties, after

the expiry of the probation period. She was engaged on 21st June, 1978 as a trainee as per terms and conditions of her appointment letter and she was not considered as workman in the legislation. She was not equally entitled for ESI and P.F. and Factories Act and Bonus Act. So during the period of training she was paid fixed stipend, initially of Rs. 200 for six months, Rs. 225 for the subsequent six months and Rs. 250 per month for the second year. During the period of her probation, an assessment of her work was made and it was found to be unsatisfactory. Resultantly, her services were terminated.—vide letter of the respondent dated 19th December, 1980. He further argued that the claimant has admitted in her statement that initially she was taken as a Trainee with the respondent-management. Further admitted that a letter of appointment of probation of six months was issued by the respondent. The claimant was taken as terms of the agreement as mere trainee for a particular period and the employer was not bound to employ her in its factory after the period of training was over. As the claimant was a temporary employee it was upon the employer to terminate the service at any time before she was confirmed. If the employer was satisfied that she was not suitable to be retained in service. So there is no dispute and the reference is bad in law.

The representative of the claimant argued this issue that the plea of the respondent that the claimant was not a workman as she was trainee in the first instance and the probationer in the second instance, there could not be any industrial dispute apprehended. But this plea of the management can be said to be an act of mis-conception of law. According to section 2-A of the Industrial Disputes Act, the definition includes any workman but does not include specific workman. Section 2(s) defines workman and according to the definition lowest category of workman the apprentice has been held to be a workman. So if an apprentice has been held to be a workman why not the case of a trainee does not fall to raise any dispute. If there is any industrial

Dispute the factual existence and the expediency to make a reference are matter entirely for the Government to decide. Court cannot say reference bad because there was in its opinion no material before the Court. So the reference is not bad in law.

After hearing the arguments of both the parties, and going through the file, I am of the view that the arguments put forward by the workman's representative have some weight and the reference is not bad in law and the issue is decided in favour of the workman and against the respondent.

#### ISSUE NO. 2:

The representative of the respondent argued on this issue that as stated by Shri Surinder Bindraw, Senior Engineer, Assembly Department as MW-1, she was appointed,—vide Ex. M-1 on probation for a period of six months. The appointment letter Ex. M-1 bears the signature of the claimant Mrs. Promila Devi. She was appointed on 21st June, 1981 as per terms and condition of the appointment letter. The supervisor of the assembly department used to apprise her by the work performed by the claimant and according to the reports he was not satisfied with the work. The witness has further stated that he personally enquired about the work of the claimant and advised her to improve the standard of work but she failed to improve the work even after the advice. He has further stated that he recommended to the departmental manager regarding the unsatisfactory work of the claimant and on the reports submitted to him it was decided by management to terminate the services of the claimant during the period of probation. The copy of the termination letter is Ex. M-2. She had undergone two years training under the voluntary training on a fixed stipend during the period of training. The trainees are not the employees of the company and not entitled to any benefit as are available to the employees of the company. Ex. M-3 is the report of her probation period which is very clear about her work. He further argued that

Ex. M-1 the appointment letter dated 21st June, 1980 was admitted by the claimant and she was appointed according to the terms and condition of that letter on probation for a period of six months reducible or extendable at the sole discretion of the respondent by a period upto three months. As the work of the claimant was not found to be satisfactory, a letter, dated 19th December, 1980 issued to her and her services stood terminated. The report of the supervisor and the engineer in this regard is very clear and her work was poor. There is settled law that the probationer has no right to the post and that too for the obvious reason that during the period of her probation period, her work and conduct has to be seen. In this case the senior engineer of the assembly department has been examined as MW-1 who has given detail of work of the claimant. So she was rightly terminated after the expiry of the probation period.

The representative of the workman argued on this issue that the plea of the respondent was that she was appointed as trainee for a period of two years and after two years service she was kept on probation for six month,—vide Ex. M-1 and after completion of six months her services were terminated automatically,—vide Ex. M-3 as her work was not satisfactory during this period. The respondent witness MW-1 has admitted in his cross-examination that the claimant is working since June, 1978 and unsatisfactory work was never intimated to her and there is no document of his progress. He also admitted that she was not engaged as an apprentice according to Apprentice Act. He further admits that she was never given any notice pay and retrenchment compensation. She was not taken as trainee she was taken as helper and paid the minimum wages and given the name of trainee, which shows the unfair Labour practice of the respondent. The certified standing Orders applicable to the respondent and there is no provisions in the standing orders about the trainee/apprentice, and she was not engaged as apprentice/trainee as prescribed in the standing orders. There is no such thing mentioned in the standing orders then the respondent has

appointed the claimant as helper and worked for two years. There is no complaint about the work for two years and if she was as trainee and her work was not satisfactory then why she was taken on probation. It clearly shows that her performance of work during two years was good and so she was taken on regular service. There is serious unemployment in the country and every body wants work without considering the capacity and the way she/he gets the service. The claimant has nothing to say about the probation or other things. It was the duty of the respondent that after two years she would have taken as regular employee and not on probation. After two years there is no need of keeping the workman on probation. The respondent has judged her work in two long years and then she was appointed as their employee. If the work of the claimant was below normal then there was no need to employ her for six months this shows that the respondent is doing the unfair labour practice and it is way how they remove the workers after the work of 2½ years. The respondent has not produced any agreement referred by the respondent for appointment as trainee because there was no such agreement. There is no classification of certified standing orders as trainee and the trainee was not under any scheme of the government. When there is no training provision in the certified standing orders, the employee was employed as permanent, temporary and probationer or casual and it is hard fact admitted by the respondent that she worked for more than 240 days and if she worked for more than 240 days she was a permanent employee and permanent employee cannot be removed without complying the provisions of section 25-F of the Industrial Disputes Act and the respondent witness has admitted in his cross-examination that no notice pay or retrenchment compensation was paid at the time of termination and no such amount was offered. The mandatory provisions of section 25-F of the Industrial Disputes Act were not complied with. Furthermore the claimant was never intimated about her work. In fact her work was satisfactory and Ex. M-3

was prepared later on by the respondent to produce in the court as there was no other document to prove by the respondent from the respondent witness as MW-1. The services of the claimant was terminated as simple termination as "services were no longer required". So it can be very well said that the services were not terminated as probationer. The claimant was a permanent employee after service of 2½ years and she was removed without complying the provision of section 25-F of the Industrial Disputes Act, which is illegal and the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties, and going through the file I am of the view that the arguments put forward by the representative of the workman has some weight and the claimant who has worked for 2½ years cannot be removed in the way in which the respondent has removed. When there is no provisions in the standing orders about the appointment as trainee then they cannot employ the claimant as trainee and she was employed as helper and not trainee and worked for two years and getting the salary of Rs. 200 for first six months, 225 for the subsequent six months and Rs 250 per month for the next year which was given to other helpers. The respondent should not have appointed the claimant on probation after observing her work for long two years and when she was employed she was employed as regular employee and it is sort of unfair labour practice by the respondent. The claimant was a permanent employee after the service of 2½ years and worked more than 240 days and she cannot be terminated by a simple order of the respondent. So the termination is not justified and in order and the claimant is entitled to her reinstatement with continuity of service and with half back wages.

This be read in answer to this reference.

The 26th November, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad,

Endorsement No. 2510, dated 3rd December, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab/12480.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Prestolite of India Ltd., 16/4, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK,  
PRESIDING OFFICER,  
LABOUR COURT, HARYANA,  
FARIDABAD

Reference No. 66 of 1981

between

SHRI DEVINDER SINGH, WORKMAN  
AND THE RESPONDENT-MANAGEMENT  
OF M/S PRESTOLITE OF  
INDIA LTD., 16/4, MATHURA ROAD.  
FARIDABAD

Shri Sagar Ram Gupta for the workman.

Shri S. L. Gupta for the respondent management.

#### AWARD

This reference was referred to this court by the Hon'ble Governor of Haryana.—vide his order No. ID/FD/279-80/6724, dated 4th February, 1981, under section 10(1)(c) of the Industrial Disputes Act, 1947 existing between Shri Devinder

Singh, workman and the respondent management of M/s Prestolite of India Limited, 16/4, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Devinder Singh, was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman is that he joined the services on 1st September, 1967 as Tools Maker and drawing Rs. 790 per month and had an unblemished career throughout. The workman was active trade unionist and taking active part which the management could not relish. The management framed a false charge-sheet against the workman on 9th March, 1980 for which the workman replied and denied the charges. But in spite of my denial and false allegations the management decided to constitute domestic enquiry against the workman and Shri S. L. Gupta was appointed as Enquiry Officer. The workman raised objections against the appointment of Shri S. L. Gupta as Enquiry Officer,—vide letter, dated 10th May, 1980 and raised other objections regarding the list of witnesses and the standing orders. But the Enquiry Officer or the respondent did not care for the objection as objected by the workman and had a fear of partial enquiry. The enquiry officer made the partial enquiry and gave the enquiry against the workman. The findings of the enquiry were not given to the workman and the management did not give the full opportunity to give his defence and after this false enquiry, terminated the services of the workman on 12th October, 1980 which is illegal, unlawful and against the principles of natural justice and the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the claimant was dismissed from service after a fair and proper enquiry against him. The workman was never a member of the

union as alleged and was given the charge-sheet containing the serious act of misconduct. He was making the job on the machine of the company which was his personal and not connected with the respondent-management. The claimant wasted his duty time ignoring urgent job entrusted to him but also used company's machine and material in making of that job. The management found the reply as unsatisfactory and constituted a domestic enquiry against the workman in which he was given the full opportunity to cross-examine the witnesses of the management and all the witnesses were examined before him. He was also given opportunity to defend in the enquiry. The workman was given copies of the proceedings simultaneously. The proceedings were signed by the workman and his authorised representative. The enquiry officer found the workman guilty of the charges levelled against him and after considering the enquiry proceedings and findings of the enquiry officer and also his past record a second show cause notice was given to the workman and after this reply and considering all these things the workman was dismissed from service.

On the pleadings of the parties, following issues were framed :—

- (1) Whether the domestic enquiry held by the management is proper, justified and in order? If so, to what effect?
- (2) Whether the termination of services of the workman is justified and in order? If so, to what relief is he entitled?
- (3) Whether the workman Shri Davinder Singh is gainfully employed since he was dismissed? If so, to what effect?
- (4) Relief

According to the orders of my predecessor Issue No. 1 be treated as preliminary issue and decided first. My findings

on issue No. 1 which is preliminary issue is as under :—

#### ISSUE NO. 1:

The representative of the respondent argued on this issue that the workman was given the charge-sheet, Exhibit M-1 for the serious act of misconduct that on 9th March, 1980 he was doing the job which was no way connected with any manufacturing process of this factory which was an outside and private job on which the workman submitted a letter, Exhibit M-2 asking for Hindi copy of chargesheet which was given to him as Exhibit M-3. The workman replied as Exhibit M-4 denying the charges. Shri S. L. Gupta was appointed as Enquiry Officer,—vide Exhibit M-5 who conducted the enquiry. The enquiry proceedings are Exhibit M-14. The enquiry officer has come as witness before the court as MW-2 and stated that he gave the full opportunity to the workman in the enquiry proceedings. The enquiry proceedings were sent by the workman's representative and there was no objection about the proceedings of the enquiry before him. He was given defence chances and he came as WW-1 in the enquiry proceedings and closed his case without giving any other evidence and he gave the findings according to the evidence and documents in the enquiry proceedings and found the workman guilty of the charges. The enquiry was fair and proper.

The representative of the workman argued that the workman was an old employee of the respondent working from 1st September, 1967 and the respondent has produced no evidence on his past bad behaviour or any enquiry against him during such a long period of service of the similar kind. It shows that the workman was not in the habit of such thing. He was the member of the trade union and took active part in trade union activities which the respondent did not relish and with a view to sack and victimise the workman issued the false and fabricated charges on 9th March, 1980 for which the workman replied and denied the charges. The respondent appointed Shri S. L. Gupta as Enquiry Officer to hold enquiry

against this workman. The workman objected the appointment of enquiry officer as the said enquiry officer was a partial person and the man of the respondent. The objection was raised by the workman,—vide his letter, dated 10th May, 1980 which is Exhibit W-1 for which he has clearly stated that the enquiry officer is a partial person of the respondent. He has also demanded the copy of the certified standing orders applicable to the workman and the management and the list of witnesses to be examined against him. As it is very clear from the proceedings of this case that Shri S. L. Gupta is defending the case in this court and he was the enquiry officer against the workman prove this fact that the enquiry officer is a legal adviser of the respondent and cannot give the findings against the respondent. The enquiry officer or the respondent did not provide the copy of the certified standing orders to the workman as demanded by him which the enquiry officer in his cross-examination as stated that it is correct that the workman objected for the appointment as enquiry officer. He has further stated on the suggestion that he do not remember whether the copy of Exhibit W-1 was given to him. The representative of the workman joined the enquiry proceedings which is with the file in which there is no mention of order or the list of witnesses were given to the workman without which no enquiry can be said as fair and proper. He has also showed the enquiry proceedings on which on 10th May, 1980, the representative of the management put before the enquiry officer the chargesheet, Exhibit M-3 and the reply of the workman, Exhibit M-4 and the appointment letter of the enquiry officer, Exhibit M-5. After closing of evidence of the respondent before the enquiry officer it clearly shows that these documents were given to the enquiry officer at the beginning of the enquiry proceedings. He further argued that the findings of the enquiry was not given to the workman with the show cause notice as stated by the workman in his statement as WW-1 and the respondent has not cross-examined the workman on this point it shows that the copies of the findings

were not given to the workman without which the workman was denied the opportunity to give the proper reply of the show cause notice given by the respondent. So no proper and fair enquiry was held against the workman and it was one sided enquiry.

After hearing the arguments of both the parties and going through the file, I am of the view that no proper and fair enquiry was held by the management as argued by the workman's representative. The workman was denied the opportunity not once but so many times. The respondent should have considered the objection of the workman as he has raised in Exhibit W-1 which was overlooked by the respondent as well as by Enquiry Officer. The workman should have provided the list of witnesses of the respondent and copy of the standing orders and after this enquiry the findings should have also been provided to the workman to reply the show cause notice. In these circumstances, I hold that the enquiry held by the enquiry officer was not proper and fair and vitiated the enquiry, and this issue is decided in favour of the workman.

#### ISSUE NO. 2 & 3:

After deciding this issue in favour of the workman and against the respondent, the parties were called to adduce their evidence on merits of the case. The parties appeared and the respondent did not adduce any evidence inspite of giving four opportunities. So I closed the evidence of the respondent on these issues. On the next date the respondent's representative did not appear in this case and I recorded the evidence of the workman ex parte. In this ex parte statement the workman himself appeared and stated that false chargesheet was given to him to terminate his service and no opportunity was given in the enquiry so his termination is wrong and unjustified and he may be reinstated with full back wages and continuity of service. The respondent-management got struck the issue No. 3 of gainful employment but did not give any evidence of this issue. In these circumstances I hold that the termination

of the workman is illegal and unjustified because the respondent was given the chance to prove the charges against the workman which they failed, before this Court. So the issues are decided in favour of the workman and against the respondent and the workman is entitled for his reinstatement with continuity of service and with half back wages.

This be read in answer to this reference.

The 29th November, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endorsement No. 2813, dated 3rd December, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

The 23rd December, 1982

No. 9(1)82-6Lab/12307.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Jind:—

BEFORE SHRI BANWARI LAL DALAL  
PRESIDING OFFICER,  
LABOUR COURT, HARYANA,  
ROHTAK  
Reference No. 46 of 81  
between

SHRI DHARAM PAL, CONDUCTOR  
NO. 172, WORKMAN AND THE  
MANAGEMENT OF THE HARYANA  
ROADWAYS, JIND

Present:

Shri Dharam Pal workman in person.

Shri A. R. Goel for the management.

#### AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNL/118-80/11254, dated 11th March, 1981, under section 10(1)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between Shri Dharam Pal, workman and the management of Haryana Roadways, Jind. The term of the reference was:—

Whether the termination of services of Shri Dharam Pal was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the notice and filed their respective pleadings, on the basis of which the following issues were framed:—

(1) Whether the workman remained absent beyond the prescribed period under rule 8.137 of Punjab Civil Services Rules ? If so, to what effect ?

(2) As per the term of reference?

On 19th February, 1982 the workman's representative stated that statement of claim filed in the present case was wrong and has been filed in the name of conductor No. 91 instead of the concerned conductor No. 172 and on the basis of that very claim statement the management had also filed their written statement in respect of conductor No. 91 and issues were also framed on 4th September, 1981 on the basis of their pleadings. The workman filed the claim statement in respect of the concerned conductor No 172 and the management was directed to file their written statement on 12th March, 1982. The management filed their written

statement on 28th April, 1982 instead of 12th March, 1982. The workman did not file the rejoinder and on the basis of the pleas of the parties the following issues were framed :—

- (1) Whether the enquiry conducted by the management is fair and proper ? If so to what effect?
- (2) As per the term of reference?

Issue No. 1 was treated as preliminary. The parties led their evidence on issue No. 1. The management examined Shri L. R. Gupta, Assistant Accounts Officer, D.R.D.A., Jind as their only witness. The workman examined himself as his only witness and closed his case. I heard the parties and decide the issues as under :—

#### ISSUE NO. 1:

The case of the management is that the services of the workman were terminated on proved case of fraud to the tune of Rs. 11.50 in the domestic enquiry which was fair and proper and in accordance with the principle of natural justice. MW-1 Shri L. R. Gupta has deposed that he remained posted in Haryana Roadways, Jind as R.S.A. from May, 1977 to June, 1982. He was appointed Enquiry Officer,—vide Exhibit MW-1/1, in case of Shri Dharam Pal. The dealing clerk brought the case file to him for the purpose of conducting enquiry containing charge-sheet, Exhibit MW-1/2. reply of the workman to the charge-sheet, Exhibit 1/3. Several letters were written to the parties to appear in the enquiry. The parties appeared on 25th January, 1979. The statement of the Inspector was recorded in presence of the workman who was given the opportunity to cross-examine him but the workman made a statement that he did not want to ask any questions nor he wanted to produce any witness in his defence and his reply to the charge-sheet be treated as his statement. The proceedings recorded are Exhibit MW-1/4, and Exhibit MW-1/5. The enquiry report submitted by him was Exhibit MW-1/6.

In his cross-examination the witness gave out that he conducted the enquiry in accordance with the C.S.R. There was no Presenting Officer from the department,—vide and the enquiry was concluded in one day. No list of witnesses or separate statement of allegations was given to the workman. He denied as incorrect that he did not provide sufficient opportunity to the workman and did not consider his reply to the charge-sheet while giving his enquiry findings.

The workman has deposed that there was no Presenting Officer of the department and he was not given the opportunity of defence. He was not supplied the copy the report of the Inspector. He was also not supplied the copy of the enquiry proceedings. He was also not given the list of allegation and list of witnesses. In his cross-examination he has admitted that he received the enquiry letter. The statement of the Inspector was recorded in his presence. He had given his statement which was at point 'A' on Exhibit MW-1/4 and also on Exhibit MW-1/5. He did not raise any objection about not supplying statement of allegations and the list of witnesses. He also did not make any demand for copy of the Inspectors report and of the enquiry proceedings.

From the evidence of the parties it is clear that the workman has not been given the copy of the complaint of the Inspector nor any statement of allegation, list of witnesses or reliance was given to the workman. The enquiry has been completed in one day. I have also gone through the enquiry file as well as the findings of the Enquiry Officer. From the proceedings recorded in the file I find that the proceedings are not recorded as dictated by the Enquiry Officer but these are the official notings, some of which are signed by the Enquiry Officer, with his order for fixing a date in the Enquiry. The statement of the workman, Exhibit MW-1/5, has been recorded on 27th December, 1978 which has not been signed by the Enquiry Officer and has not been recorded before him. On the official

noting for 17th December, 1978 there is no order for fixing further date and on 18th January, 1979 the Enquiry Officer has ordered for fixing the enquiry on 25th January, 1979. The statement of the Inspector complainant was recorded on 25th January, 1979 which has been marked as Exhibit MW-1/4 the statement of Shri Dharam Pal has been recorded wherein he has stated that he did not want to ask any question nor he wants to examine any witness in his defence and he had punched tickets equal to full fare applicable and his way bill might be seen. His reply to the charges be considered as his statement. From the enquiry proceedings I reach an easy conclusion that it is an empty formality and a mere show of enquiry. The statement of the Inspector recorded during the enquiry is an after thought and an improvement per his report submitted to the General Manager on which the charge-sheet was framed. Nowhere in his report he has stated that he had collected all the tickets and has seen them carefully. The Inspector who had checked the bus at an earlier stage had closed the number of the tickets and got down at Dadri. He further stated that all the remaining tickets were found with the passengers and it was proved that the conductor had issued less tickets worth Rs. 11.50. This is quite a different story, as narrated in the report and this is because of the reply of the workman to the charge-sheet and his statement as given on 27th December, 1978 earlier to the statement of Inspector recorded on 25th January, 1979. If there had been any truth in the statement of the Inspector he would have mentioned the facts in his report that he found the tickets from 6429 to 6432 of Rs. 1.80 denomination with the other passengers then who travelled from Dadri to Pehowa. The way bill clearly shows that the Inspector who got down at Dadri had closed the tickets of Rs. 1.80 denomination at number 6429 establishing the fact that tickets from 6429 onwards were issued from Dadri onwards. The version of the workman given in his reply that the four tickets from number 6429 to 6432 were lost seems probable as has been

given by the workman that no one could have issued less tickets to a passenger who had to travel a journey of about 165 kilometers and when the bus was expected to be checked by several Inspectors on the way before it reaches the destination. These are the material facts which have not been considered by the Enquiry Officer and if the same had been considered the findings would have been different. On the basis of the evidential material before the Enquiry Officer it was not reasonable and just for him to hold the workman guilty of the charges. The conclusion of the Enquiry Officer does also go to show that he was labouring under the impression that it was not the management to prove the charges rather it was the workman who has to prove himself innocent and he has not based his findings as to on what material the charges had been found proved. In view of the above observations the enquiry is either in accordance with the Civil Services Rules nor it is fair and proper and the findings are perverse and vitiated. The issue is accordingly decided against the management.

#### **ISSUE NO. 2:**

In view of my findings on issue No. 1 while it has been held that the findings of the Enquiry Officer are not fair and proper and also perverse and not based on the material on record before the Enquiry Officer it has been held by the Hon'ble Kerala High Court in 1982 Lab. I.C., page 261, replying the Supreme Court decision reported in 1973, Lab. I.C., page 851 and 1975 Lab. I.C., page 1441 that if the findings are found perverse there was no need to give another opportunity to the respondent-management to supplement or improve upon the evidence adduced by them in the enquiry. I also don't find if the management had any other means to prove the charges levelled against the workman on the basis of which the management has terminated the services of the workman. I accordingly hold that the termination of the workman on the basis of the enquiry which has not been fair and proper and held perverse is neither justified nor in order. The workman is entitled to reinstatement with

continuity of service and with full back wages. The reference is answered and returned accordingly.

The 19th November, 1982.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

Endorsement No. 2619, dated the 20th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

The 19th November, 1982.

No. 9(1)82-6Lab/12309.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s General Manager, Haryana Roadways, Bhiwani:—

BEFORE SHRI BANWARI LAL DALAL.  
PRESIDING OFFICER,  
LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 3 of 1979

between

SHRI MANGAT RAM, WORKMAN AND  
THE MANAGEMENT OF GENERAL  
MANAGER, HARYANA ROADWAYS,  
BHIWANI

Present:

Shri S. R. Gupta for the workman

Shri Vijay Veer Singh for the management.

## AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/HSR/59-78/60356, dated 29th December, 1979, under section 10(1)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between Shri Mangat Ram, workman and the management of M/s General Manager Haryana Roadways, Bhiwani. The term of the reference was:—

Whether the termination of services of Shri Mangat Ram was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleadings, on the basis of which the following issues were framed:—

- (1) Whether the enquiry conducted by the management was fair and in compliance with the rules of natural justice and law ?
- (2) As per reference ?

Issue No. 1 was treated as preliminary. The management examined Shri Bhoop Singh, Traffic Manager, Haryana Roadways, Jind, on solemn affirmation. The workman examined himself as his own witness and closed his case. I heard the learned representatives of the parties and decide the issues as under:—

### ISSUE NO. 1:

MW-1 Shri Bhoop Singh has deposed that he remained posted as Traffic Manager, in Haryana Roadways, Bhiwani, from May, 1975 to December, 1979 and conducted the enquiry in case of Shri Mangat Ram, workman. He was appointed Enquiry Officer,—vide Exhibit MW-1/1, charge-sheet was, Exhibit MW-1/2. Exhibit MW-1/3 was the reply of the workman to the charge-sheet. He issued several letters to the parties concerned for appearance which were from

Exhibit MW-1/4 to MW-1/8. The parties appeared in response to his notice, Exhibit MW-1/9. He showed the papers to the parties relating to the enquiry and also told them about the procedure. He recorded the statement of the Inspector, allowed the workman to cross-examine him and he himself asked some questions from the checking Inspector. The statement of the workman was also recorded which was Exhibit MW-1/11. His enquiry report was Exhibit MW-1/12. No objection of any sort was raised by the workman during the course of domestic enquiry. In his cross-examination he stated that he was not aware whether or not C.S.R. was applicable to the employees of the Haryana Roadways. No service rules were considered by him. No separate statement of all allegation was issued to the workman. No report about the preliminary investigation was produced before him and he admitted as correct that no copy of the report was supplied to the workman before start of the enquiry. He also admitted as correct that the enquiry proceedings did not include every detail of all that transpired during the course of proceedings. He admitted as correct that during the enquiry none except him, the workman and the Inspector was present. He further admitted that he cross-examined the workman. No past record of the workman was produced before him. He submitted his findings Exhibit MW-1/18.

The workman has deposed that no list of witnesses or the copy of complaint was supplied to him either before the start of enquiry or at the start of enquiry. Three persons the Inspector, the Traffic Manager and he himself were present at the time of enquiry which lasted only for half an hour. In his cross-examination he has stated that show-cause notice was received by him and he replied the same. He did not receive the copy of the complaint and the list of the witnesses. He made no complaint that the statement of the Inspector had been recorded before he reached the place of enquiry. He did not make any such allegations in his reply to the show-cause notice, Exhibit M-2.

The management representative argued that the workman has made no objection against the enquiry either during the course of enquiry or in his reply to show-cause notice. He further argued that the Enquiry Officer could put leading questions and he cannot be said to be acting as prosecutor and cited 1970, II LLJ, page 201, in support of his contention. The Enquiry Officer has put questions to the workman which are of incriminating nature on the past conduct of the workman establishing the bias of the Enquiry Officer who had prejudiced opinion against the workman and which was not relevant to the charge-sheet regarding which he was appointed Enquiry Officer and when no such past record was placed before him. The biasness of the Enquiry Officer is also proved when he got the proceedings, dated 20th August, 1975, signed by two Inspectors in order to create evidence in support of his findings to which he seems to have made up his mind. This belies his statement when he appeared as MW-1 that there was none except himself the complainant Inspector and the workman in the course of proceedings. It is not understandable as to how the two other Inspectors who had signed the proceedings on 20th August 1975 happened to be present. The proceedings for 20th August, 1975, is not a credible record. In his cross-examination he has also admitted that the proceedings did not contain all that transpired during the course of enquiry. This also lends support to my finding that the enquiry proceedings is not the true record of what took place in the enquiry. The conclusion reached by the Enquiry Officer is also based on the alleged past conduct of the workman which has been imported by the Enquiry Officer on his own previous knowledge and with no evidence led before him which is the result of the prejudices borne by the Enquiry Officer against the workman. There is no mention of the evidence led by the management relying upon which the Enquiry Officer has based his findings. The concluding lines of the findings are that the delinquent workman is in the habit of not giving unpunched tickets when he is caught in the case and he also

quarrels with the Inspectors and as such the workman was guilty. From the findings of the Enquiry Officer it is but clear that he has given no cogent reasons on the basis of the evidence before him to arrive at a conclusion that the charges levelled against the workman were proved and the findings have been based on no evidence before him and the same are perverse and vitiated and the Enquiry Officer has not acted impartially and the enquiry too is not fair and proper. The issue is accordingly decided against the management.

#### ISSUE NO. 2:

In view of my findings on issue No. 1 while it has been held that the findings of the Enquiry Officer are perverse and vitiated which form the basis of the final show-cause notice of termination. The termination is, therefore, itself wrong and unjustified. The workman is entitled to reinstatement with continuity of service and with back wages from the date of the notice of demand to the date of reinstatement as the workman has lost much of the time on raising his dispute and presenting his case before the proper forum and for this delay the management cannot be held liable for the wages for no fault of theirs. The reference is answered and returned accordingly.

The 19th November, 1982.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

Endorsement No. 2617, dated 20th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 9(1)82-6 Lab 2313.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s. Mohan Spinning Mills Circular road, Rohtak.

BEFORE SHRI BANWARI LAL DALAL,  
PRESIDING OFFICER, LABOUR COURT,  
HARYANA, ROHTAK.

Reference No. 56 of 78

between

SHRI GURDAYAL SINGH, WORKMAN AND  
THE MANAGEMENT OF M/S MOHAN  
SPINNING MILLS, CIRCULAR ROAD,  
ROHTAK.

Present.—

Shri Bhim Sain Prabakar, for the workman.

Shri M. M. Kaushal, for the management.

#### AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/RTK/5-78/16868, dated 3rd May, 1978<sup>†</sup> under section 10(1)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Gurdhayal Singh, workman and the management of M/s. Mohan Spinning Mills, Rohtak. The terms of the reference was:—

\* Whether the termination of services of Shri Gurdhayal Singh was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same, filed their respective pleadings, on the basis of which the following issues were framed 4th October, 1978:—

- (1) Whether the domestic enquiry held by the management is proper and fair and in accordance with the principles of natural justice ?

(2) Whether the termination of services of the workman was justified and in order?

(3) If not, to what relief is he entitled.

Issue No. 1 was treated as preliminary by order of my predecessor dated 8th August, 1979. The workman volunteered to admit the enquiry documents placed on record by the management and made the following statement on 8th August, 1979:—

"I receive notice of enquiry Ex. M-1 and charge-sheet Ex. M-2 on 8th July, 1977. Enquiry notice Ex. M-3 and enquiry proceedings from page 1 to 42 which is exhibited as Ex. M-4 was conducted in my presence. Ex. M-5 was submitted by me. Ex. M-5 to M-24 are received by me. But I went to cross-examine the Enquiry Officer. As the Enquiry Officer did not conduct full and proper enquiry".

The management examined Shri S. N. Sharma, Advocate Rohtak and Shri S. C. Jain, as their witnesses and closed their case. The workman examined Shri S. N. Sharma and himself as his witnesses and also filed an Affidavit which has been marked Ex. WW-2/1, I heard the learned representatives of the parties and have also gone through the evidence carefully decide the issues as under:—

#### ISSUE NO. 1

The workman has alleged in his notice of demand that his services were terminated without any prior notice,—vide letter dated 10th December, 1977. The action of the management was illegal and an intentional act of victimisation. Where as in his statement of claim the workman has pleaded that he was not given the duty on 21st June, 1977 without any notice or assigning any reason. He received a charge-sheet on 27th June, 1977,—vide which he was placed under suspension with effect from 21st June, 1977. He replied the same,—vide his letter dattd 29th June, 1977 and after that the management terminated his services on 11th Decembes, 1977 by holding a one sided enquiry in a pre-planned manner having conspired against him /even inspite of his repeated protests against the appointment

of the Enquiry Officer and the one sided enquiry. The management had acted in a revengeful manner when he tried to form a union of the workers.

The management resisted the pleas of the workman and pleaded that the workman committed serious misconduct for which he was charge-sheeted and a proper domestic enquiry was conducted in which the charges were found proved and the management validly dismissed the services of the workman on the basis of the proved misconduct.

The workman has admitted the correctness of the enquiry proceedings from page 1 to 42,—vide his statement recorded on 8th August, 1979. He has also admitted therein that he received the notice of enquiry and the charge-sheet and further admitted that the enquiry was conducted in his presence. From the statements of the witnesses of the parties and from the proceedings of the enquiry recorded by the Enquiry Officer it is more than clear that the workman had been granted full opportunity of defence and cross-examination of the management witnesses. The management produced four witnesses in the enquiry and the workman has cross-examined all the four witnesses and the cross-examination is double the length to that of the examination in chief in case of each of the witnesses. The workman has also examined four witnesses in his defence and it is also further clear that the workman has been granted more adjournments on his request in comparison to the management. All the record which the workman wanted the management to produce before the Enquiry Officer was duly produced. The workman has not placed on the file any copy of the protest which he has alleged in his statement of claim against the appointment of Shri S. N. Sharma, as Enquiry Officer or against the alleged one sided enquiry being conducted by him. The main objection raised by the workman is about the charge-sheet. The management issued one charge-sheet which is, dated 21st June, 1977, which was refused to be received by the workman as has been stated by Shri Partap Singh, management witness, who had given his remarks on the charge-sheet which was also sent by registered post to the workman. Again there is charge-sheet, dated 23rd June, 1977 incorporating the charges levelled in charge-sheet, dated 21st June, 1977 with an additional charge of refusal to receive the charge-sheet, dated 21st June, 1977, which has been admitted to have been received by the

workman on 27th June, 1977 to which he had submitted his reply from the charge-sheets, dated 21st June, 1977 and 23rd June, 1977 it is clear that the charges were in fact the same and no prejudice is caused to the workman if the Enquiry Officer has mentioned in his findings that he conducted the enquiry in the charges containing charge-sheet, dated 21st June, 1977 and while he was appointed to conduct the enquiry about the charge-sheet, dated 23rd June, 1977. The other objections raised by the workman is that the Enquiry Officer has based his findings on Ex. M-31 and M-32 the statements of Shri Ram Dular and Shri Sannu, who also appeared as defence witnesses. The workman further contended that these documents were placed on file behind his back and he was not given the opportunity to meet them out. The workman has also produced before me the affidavits of Shri Ram Dular and Shri Sannu in his evidence. The workman was cross-examined on this point by the management representative. The workman gave out that the concerned persons were living at Rohtak and they were not incapable of walking over the distance to this court. In Ex. M-31 and M-32, they had stated that the workman was a dangerous person and they gave their statements under threat and pressure from the workman. They had written that the application may be kept secret and the workman may not be informed about the same and they had further stated that they have made the statement voluntarily. The affidavits produced by the workman have not been verified by the deponents. The non-production of the deponents in the witness box before me does show that these documents are also got executed from the workman under threat and pressure and are also not reliable as the same are not verified. The Enquiry Officer Shri S. N. Sharma, who is an advocate and an independent person, who has given his remarks on points 'A' of Ex. M-31 and M-32 and who has deposed that they formed the part of proceedings has to be relied upon and the Enquiry Officer has not considered their statements and the same were not taken to be the part of the enquiry proceedings. Even otherwise in my opinion the statements of such persons who have a wavering and shifting stands is dangerous to rely upon and to arrive at a conclusion on the basis of the same. The management has placed before the Enquiry Officer copy of a settlement dated 5th July, 1974, which has been arrived between the two unions of workers and from

this also it is clear that the allegation of the workman that he was trying to form a union of workers is wrong and incorrect and it has been proved that there were two unions of employees. It has also been proved that the workman held two gate meetings one at 3-15 p.m. and the second at 11.00 p.m. on 20th June, 1977, showing the conduct of the workman and the slogans shouted at the meeting as has been given by his witnesses do also show that the workman has instigated the workers for a strike and other charges which had been levelled against him were proved and the findings of the Enquiry Officer have been based on the evidence placed before him by the parties and are not in any way perverse and suffer any infirmity. The Enquiry Officer has acted most impartially and has left no occasion for a complaint that full opportunity of defence or cross-examination was not provided to the workman and there was in any way violation of the principle of natural justice in the conduct of the enquiry. I accordingly decide the issue in favour of the management.

#### ISSUES NO. 2 & 3:—

In view of my findings on issue No. 1 the charges levelled against the workman are proved in a fair and proper enquiry. The termination based on the findings of the Enquiry Officer is not wrong and is justified. The misconduct committed by the workman is according to the Certified Standing Orders a grave misconduct fully justifying the punishment of dismissal and there cannot be a case of victimisation when the charges stand proved as proved misconduct and victimisation cannot go together as one is the antithesis of the other. I accordingly hold that the termination of the workman is justified and proper. The workman is not entitled to any relief. The reference is answered and returned accordingly.

BANWARI LAL DALAL;

Presiding Officer,

Labour Court, Haryana, Rohtak.

Dated the 19th November, 1982.

Endorsement No. 2613, dated the 19th November, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.